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No. 80-331

In the Supreme Court of the United States

OCTOBER TERM, 1980

ALLEN G. HICKS AND CLAUDETTE HICKS, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.
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Petitioners seek review of the decision below upholding the Commissioner's determinations of deficiencies in income tax on the ground that they are not taxable on amounts received in the form of checks.

The pertinent facts may be summarized as follows: Petitioner Allen Hicks is a veterinarian who maintains a practice under the name Freestone County Veterinary Hospital. For the year 1974, petitioner filed a Form 1040 (Individual Income Tax Return) on June 11, 1975, and an amended Form 1040 on July 13, 1977. Neither form contained information other than petitioner's name, address, social security number, filing status and claimed exemptions. On the first form the words "[o]bjection: self-incrimination" were written in all the blanks provided for financial information. On the amended form, petitioner

attempted to justify his omission of the requested information on a variety of constitutional and statutory grounds. Although Allen Hicks' amended Form 1040 checked the box "Married filing joint return," his wife, petitioner Claudette Hicks, did not sign that form, nor did she file an income tax return on her own behalf for 1974 (R. 258, 260-261).[1]

The Commissioner obtained from William C. Glazener, a tax return preparer, copies of his records pertaining to petitioners' tax liabilities, including a draft income tax return prepared from petitioners' books and records for 1974. They never filed that return. Based on this information, the Commissioner asserted that each petitioner had community property taxable income of $16,075.18 for 1974. Petitioners did not dispute the factual basis for this assertion of taxable income, and the deficiencies and additions to tax redetermined by the Tax Court are based on this assertion (R. 258-259, 261-262). Instead, they argued that they are not taxable on amounts received in the form of checks, drawn on the accounts of solvent drawers. It is, however, well recognized that checks ordinarily constitute income to cash basis taxpayers such as these petitioners. *Kamm's Estate* v. *Commissioner*, 349 F. 2d 953, 955 (3d Cir. 1965), and cases cited therein. Petitioners have advanced no reason why this settled rule is not applicable to them.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

NOVEMBER 1980

[1] "R." refers to the original record as repaginated by the Clerk of the Tax Court.

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